



In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 240

ANDRE MAXIMOV, AS TRUSTEE FOR THE BENEFIT OF H.
ROBBIN FEDDEN, U/A DATED 10/24/47, PETITIONER
v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The petitioner is the trustee of an *inter vivos* trust created under the laws of Connecticut. The income beneficiaries (the settlor for life, then his wife for life) and the contingent remaindermen (the settlor's surviving issue) are all residents of the United Kingdom. During 1954 and 1955, the trust realized capital gains which, under Connecticut law, were added to corpus. The question is whether the residence of the beneficiaries caused the trust to be exempt from the United States income tax on those gains under Article XIV of the Income Tax Convention between the United States and the United Kingdom, 60 Stat. (Part 2) 1377, 1384, which provides:

A resident of the United Kingdom not engaged in trade or business in the United States shall be exempt from United States tax on gains from the sale or exchange of capital assets.

The Court of Appeals for the Second Circuit held that the trust, being a separate taxable entity not itself qualifying as a "resident of the United Kingdom," was not exempt. That decision is in our view correct, but we acknowledge that it is in conflict with the decision of the Ninth Circuit in *American Trust Co. v. Smyth*, 247 F. 2d 149. The question is of considerable importance; is pending in a number of cases; and can arise also under similar provisions of other conventions. In view of the conflict of decisions, the government does not oppose the granting of the petition for certiorari.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

AUGUST 1962.